

**EXHIBIT E**

**SUPPORTING LEGAL BRIEF**

This exhibit presents a statement fully explaining how the CBJ's proposed annexation satisfies the constitutional, statutory, and regulatory standards and procedures the LBC must consider.

Exhibit E: Supporting Legal Brief

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Supporting Legal Brief

This exhibit presents a detailed explanation of how the proposed annexation serves the best interests of the state, and satisfies each relevant constitutional, statutory, and regulatory standards and procedures the LBC must consider.

**I. SUMMARY OF PROPOSED ANNEXATION AREA**

The proposed annexation would result in the CBJ absorbing approximately 1,428 square miles currently located in the State’s unorganized borough.

The proposed annexation area is divided into 4 areas, more or less generally described as the Tracy Arm Area between the existing CBJ boundary and south to the Petersburg Borough (Area A), lands abutting and in Seymour Canal beginning with the Pack Creek watershed and including all lands to the north that drain into Seymour Canal, the Glass Peninsula (Area B), Horse and Colt Islands, all of the lands on Admiralty Island to the north of Hawk Inlet, including Mansfield Peninsula, but excluding those lands that lie with the watersheds that drain into Funter Bay (Area D), and an area south of the Greens Creek Mine and the existing CBJ boundary that encompasses all lands that drain into Wheeler Creek and lands to the west of the Wheeler Creek basin that drain directly into Chatham Strait (Area C).<sup>1</sup>

These areas are unincorporated territory within the Local Boundary Commission’s 1997 Model Borough Boundary for the CBJ as defined by 3 AAC 110.990(9). The southern border of the annexation area “C” has been extended slightly from the model borough boundary to follow

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<sup>1</sup> See Resolution 2817am, provided as Exhibit E with the Petition.

the natural watershed of Wheeler Creek. The southern border of proposed annexation area B has been extended slightly to follow the natural watershed of Pack Creek.

**II. THE PROPOSED ANNEXATION AREA SATISFIES THE REQUIREMENTS OF 3 AAC 110.160 AND ARTICLE X, SECTION 3, AND THE POST-ANNEXATION BOROUGH WILL EMBRACE AN AREA AND POPULATION WITH COMMON INTERESTS TO THE MAXIMUM DEGREE POSSIBLE**

The LBC has promulgated standards designed to ensure compliance with the directives of Article X, Section 3 of the Alaska Constitution, requiring that boroughs include the “population, geography, economy, transportation and other factors” necessary to “embrace an area and population with common interests to the maximum degree possible.” With respect to annexation, these standards can be found at 3 AAC 110.160. The annexation proposed by the CBJ satisfies these standards, and in doing so, satisfies the constitutional mandate of Article X, Section 3.

**A. The Social, Cultural, and Economic Characteristics and Activities of the People and Users in the Area Proposed for Annexation are Integrated and Interrelated with the Existing Borough (3 AAC 110.160(a))**

3 AAC 110.160(a) requires that the LBC consider whether the social, cultural, and economic characteristics and activities of people in the area proposed for annexation are interrelated and integrated with the characteristics and activities of the people in the existing borough. Consideration of the property owners and users of the area illustrates the strong connection of the area to the CBJ over any other municipal entity – existing or proposed.

**1. The private property owners within the proposed annexation areas have strong ties to the CBJ.**

The land to be annexed is a combination of federally-owned land, some state and tribally owned land, and several private parcels. The USFS owns the majority of the land.<sup>2</sup>

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<sup>2</sup> See BLM land status mapper, located at: <https://www.fs.fed.us/land/ALPLandStatusandEncumbrance/>.

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There are estimated 230 unique<sup>3</sup> property owners in the proposed annexation areas, 213 of whom are identified as individuals. Of the private property owners, there are only six individuals who have been identified as residing in the proposed annexation area.<sup>4</sup> These individuals have CBJ mailing addresses, and come to the CBJ to retrieve their mail and shop for supplies.<sup>5</sup>

The remaining private parcels are either undeveloped or have recreational cabins and are used recreationally. The vast majority of these property owners reside in the CBJ full-time, are registered to vote in CBJ, and have already been included in the CBJ's population count:<sup>6</sup> Importantly, of the registered Alaska voters who own property in the annexation area, only four list their full-time addresses as outside the CBJ: three individuals live in the Anchorage region, and one person in Gustavus. None of the individuals who own property in the proposed annexation areas are registered to vote or reside in Angoon, Hoonah, Petersburg, or Haines, the communities that are closest to the proposed annexation areas.

Of the property owners who are not registered voters, the majority of them live outside Alaska and are not Alaska residents.<sup>7</sup> The remainder are identified as living within the CBJ, with a small number in southcentral and northern Alaska.<sup>8</sup>

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<sup>3</sup> These are several individuals and businesses who own more than one piece of property.

<sup>4</sup> These individuals have been identified as registered voters by the Alaska Department of Elections: two are on Colt Island, one in Area C, and three on Horse Island.

<sup>5</sup> See Exhibit B with the Petition for the addresses of the property owners.

<sup>6</sup> Voter registration information was obtained by the State of Alaska Division of Elections.

<sup>7</sup> See Exhibit B. Of the individuals not registered to vote in Alaska or who could not be conclusively determined by the Division of Elections, addresses were identified through public search engines, seven of whom live in Juneau, four who live in other parts of Alaska (two in Anchorage or Eagle River, one each in Fairbanks and Whittier), and eighteen of whom live outside Alaska (1 person in Florida, 2 in North Carolina, 1 in Utah, 1 in Indiana, 1 in Montana, 1 in either Oregon or Arizona, 3 in Oregon, 1 in Arizona, 4 in Washington, 1 in either Oregon or Juneau, 1 in either Idaho or Juneau, and 1 in Colorado). Two property owners appear to be deceased, with their last known addresses in Juneau. Another 4 individuals appear to not be registered to vote in Alaska and addresses of their residences are unknown.

<sup>8</sup> *Id.*

Looking at the addresses for the private individual property owners, the ties to the CBJ are much greater than any ties to any other Alaska community. As described by the Department of Community and Regional Affairs (DCRA) recommending annexation for the part of Admiralty Island which is currently part of the CBJ in the 1990 report, “annexation would not be significant in terms of bringing additional population into the CBJ, but would bring into the CBJ’s boundaries an area which already has significant social, cultural, and economic ties to Juneau.”<sup>9</sup> The Department previously identified that the resident and property owners in Horse and Colt Island and Glass Peninsula area and the area south of CBJ had greater ties to CBJ than to a prospective Chatham Borough or any other region.<sup>10</sup> Identification of the current property owners confirms that this has not changed since 1990.

2. The non-profit associations who manage property within the proposed annexation areas are headquartered in the CBJ.

There are two non-profit entities who own or manage properties within the proposed annexation areas, both of which are based out of the current CBJ. On Mansfield Peninsula, the Point Retreat Lighthouse and False Point Retreat Lighthouse has been granted by restricted deed to the Alaska Lighthouse Association, a 501(c)(3) entity with an address in the CBJ.<sup>11</sup> There also appears to be a 129 acre property on the eastern side of the Mansfield Peninsula across from Horse and Colt Island with a conservation easement managed by the Southeast Alaska Land Trust (SEAL Trust). This property is described by SEAL Trust as part of the Juneau land area and is surrounded

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<sup>9</sup> *Report and Recommendation to the Local Boundary Commission Concerning the: 1) Proposed Annexation of the Greens Creek Mine to the City and Borough of Juneau, 2) Ideal Boundaries of the City and Borough of Juneau*, Department of Community and Regional Affairs, June 1990, p. 21. Report is attached as Exhibit L.

<sup>10</sup> *Id.* at pg. 23.

<sup>11</sup> The Alaska Lighthouse Association has a mailing address in Douglas, which is a neighborhood within the CBJ.



by USFS land on three sides.<sup>12</sup> SEAL Trust is based out of Juneau.<sup>13</sup> The owners of this parcel also live in Juneau.<sup>14</sup>

3. The commercial properties within the proposed areas have strong connections to the CBJ.

There are few commercial properties in the proposed annexation area.

The Greens Creek mining company owns a large 7,300 acre parcel within Area C. Greens Creek owns the mine on Admiralty Island that is already within the CBJ boundaries, as annexed in 1994.<sup>15</sup> It is reasonably likely that the Greens Creek mine may expand their mining activities into proposed annexation Area C. As the department explained in 1990, “no other community is better prepared to provide the support, transportation and commercial activities needed by the mining industry in the region in general, and the Greens Creek project in particular.”<sup>16</sup> Same as in 1990, travel to Greens Creek Mine is via the CBJ, miners commute daily by passenger vessel from homes with the CBI, and the mine has its corporate offices in the CBJ.<sup>17</sup>

There is also one tourism-based business on Colt Island: Orca Point Lodge owned by Allen Marine Tours. While this company is incorporated in Sitka,<sup>18</sup> a large majority of their business is conducted within the CBJ, and the tours to Orca Point Lodge all leave from the CBJ.<sup>19</sup>

There are two parcels next to Allen Marine Tour’s property on Colt Island, which are

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<sup>12</sup> SEAL Trust website, “Lands We Steward/Juneau/lobaugh”, available on the world wide web at: <https://www.southeastalaskalandtrust.org/lands-we-steward/juneau/lobaugh/>

<sup>13</sup> SEAL Trust website, “about us”, available on the world wide web at: <https://www.southeastalaskalandtrust.org/about/>.

<sup>14</sup> The parcel is owned by Melinda and Skiff Lobaugh. Mindy and Skiff Lobaugh are listed in the CBJ Assessor’s database as owning residential property in North Douglas, within the CBJ.

<sup>15</sup> Greens Creek Mine is owned by Hecla Greens Creek, which although incorporated in Idaho has the active mine within CBJ’s existing boundaries.

<sup>16</sup> See Exhibit L, *Report and Recommendation to the Local Boundary Commission Concerning the: 1) Proposed Annexation of the Greens Creek Mine to the City and Borough of Juneau, 2) Ideal Boundaries of the City and Borough of Juneau*, Department of Community and Regional Affairs, June 1990, p. 18.

<sup>17</sup> *Id.*

<sup>18</sup> DCCED, Alaska Division of Corporations Database, <https://www.commerce.alaska.gov/cbp/main/search/entities>.

<sup>19</sup> See Allen Marine Tours website, which identifies the tour for Orca Point Lodge as leaving from Juneau. <https://allenmarinetours.com/juneau/whale-bake/>

owned by Four Seasons Marine Services Corporation, a company registered in Alaska with a physical address in Seward.<sup>20</sup> It is unclear what this company does with that property, but CBJ understands that Four Seasons Marine runs or used to run the boats that take the workers from the CBJ to the Greens Creek Mine. Four Seasons Marine Services Corporation does own property in the current CBJ as well as has a business dock near the ferry terminal within the CBJ.<sup>21</sup>

SeaAlaska, an ANCSA native corporation, owns a small parcel on Mansfield Peninsula. SeaAlaska is a native corporation headquartered in CBJ.<sup>22</sup>

#### 4. CBJ residents recreate in the area.

With respect to use by Alaskans, CBJ residents recreate in the area more than any other group. The DCRA previously explained that the CBJ should annex the Mansfield Peninsula, eastern half of Seymour Canal, Glass Peninsula, Horse Island, Colt Island, and south of CBJ, because these are areas that are heavily utilized and impacted by CBJ residents.<sup>23</sup> This has not changed since the DCRA made its determination.

#### *Hunting*

According to the Alaska Department of Fish and Game (hereinafter “ADF&G”), the vast majority of resident sports hunters using the proposed annexation areas are from CBJ.

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<sup>20</sup> DCCED, Alaska Division of Corporations Database, <https://www.commerce.alaska.gov/cbp/main/search/entities>. The mailing address is in Bremerton, Washington.

<sup>21</sup> See Parcel #4B1601120090, on the CBJ assessor’s database, located at: [www.juneau.org/assessordata/sqlassessor.php](http://www.juneau.org/assessordata/sqlassessor.php). They also are present at 13401 Glacier Hwy, 99801, Juneau, AK. This is a dock located near the State of Alaska Marine Highway dock for the Alaska ferries.

<sup>22</sup> Seaaalska is incorporated in Alaska with their headquarters within the CBJ, at One SeaAlaska Plaza, Suite 400, Juneau, AK 99801. DCCED, Alaska Division of Corporations Database, <https://www.commerce.alaska.gov/cbp/main/search/entities>.

<sup>23</sup> *Report and Recommendation to the Local Boundary Commission Concerning the: 1) Proposed Annexation of the Greens Creek Mine to the City and Borough of Juneau, 2) Ideal Boundaries of the City and Borough of Juneau*, Department of Community and Regional Affairs, June 1990, p. 26. Report is attached as Exhibit L.

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The Tracy Arm area (which is within Game Management Unit 1C<sup>24</sup>) is used by hunters for mountain goats, brown bear, and black bears. Of the Alaska residents, the following percentages have been provided by ADF&G for the years 2013-2017:

- 82% of Alaska resident mountain goat hunters list their community of residence as CBJ.
- 100% of Alaska resident brown bear hunters list their community of residence as CBJ.
- 100% of Alaska resident black bear hunters list their community of residence as CBJ.

Northern Admiralty Island and Glass Peninsula (Game Management Unit 4) is used by hunters for brown bears and Sitka-black tailed deer. Of the Alaska resident hunters, the following percentages have been provided by ADF&G:

- 79% of Alaska resident brown bear hunters list their community of residence as CBJ.
- 95% of Alaska resident Sitka black-tailed deer hunters list their community of residence as CBJ.<sup>25</sup>

There are non-Alaska hunters who use these areas as well; Alaska hunting regulations require all non-Alaska residents to use a guide when hunting brown bear and mountain goats in the above areas.<sup>26</sup> According to the big game guide database, there are nine permitted commercial hunting guides from eight different outfits in the proposed annexation areas. There are more guides based out of CBJ than any other location.<sup>27</sup>

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<sup>24</sup> See the attached map of Game Management Units, attached as Exhibit M).

<sup>25</sup> Percentages provided by Ryan Scott, Assistant Director, ADF&G Division of Wildlife Conservation, May 10, 2019, email attached as Exhibit N.

<sup>26</sup> Per Ryan Scott, November 7, 2018 letter, attached as Exhibit O.

<sup>27</sup> Of the 8 companies, four are based out of Juneau. 1 is based out of Sitka. 1 company is based out of Gustavus (with two guides). 1 is based out of Petersburg. 1 is based out of Dillingham, AK. Analysis by Rachel Friedlander, former CBJ Project manager. Source:

<https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/BigGameCommercialServicesBoard.aspx>

*Public Use Cabins*

In Area B, the State of Alaska owns the Oliver Inlet State Marine Site, and public recreational use cabin, which is used extensively by residents of CBJ. According to Alaska State Parks, 71% of cabin users in Oliver Inlet come from the CBJ.<sup>28</sup> Under 2% came from Sitka, and the rest come from out-of-state.<sup>29</sup>

*Permitted recreational cabins*

On the Glass Peninsula, and sparingly on the Mansfield Peninsula, there are a series of cabins that predate ANILCA or are recreational residences by permit. The permittees of these cabins do not own the land beneath the cabins, which remains USFS ownership. While the names and addresses of these permittees were withheld by the USFS, the USFS did provide the city of residence for these permittees. Of the 28 locations, 23 are permitted by individuals from CBJ, including Auke Bay and Douglas.<sup>30</sup> The remaining permittees are from outside Alaska.<sup>31</sup>

5. Commercial activity in the proposed annexation area is compatible with the existing borough.

The proposed annexation area is connected to ongoing commercial activity based in, or substantially related to, the CBJ.

*Mining*

As described above, Greens Creek mine owns a large parcel in Area C. The currently active portion of Greens Creek mine is within the existing boundaries of the CBJ. In addition to the property owned by Greens Creek Mine in Area C, there are two other mining companies who own

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<sup>28</sup> Visitor Demographics Report, 2018, attached as Exhibit P. 71% includes two separate zip codes for Juneau, Auke Bay, and Douglas, all within the CBJ. Chart obtained from Preston Keos, Alaska State Parks Southeast Region Superintendent, 6/11/19.

<sup>29</sup> The report was unable to determination visitor zip codes for 11% of users.

<sup>30</sup> See Annexation Area Cabin Summary, obtained from the USFS on November 21, 2018, and attached as Exhibit Q.

<sup>31</sup> *Id.*

property in Area C, as well as Juneau-based mining company who has active mining rights in Area D close to the existing Greens Creek Mine. A mining company also owns a 1,900 acre parcel in Area A. There is reasonable likelihood that future growth and development of the Greens Creek Mine or other mines may occur within the proposed annexation areas and annexation will enable the CBJ to plan for and control that development.

### *Commercial Fishing*

The CBJ is home to 306 commercial fishing vessels.<sup>32</sup> The salt waters within the proposed areas may also be used by fishing vessels from Angoon (5 registered commercial fishing vessels)<sup>33</sup>, and Hoonah (77 commercial fishing vessels).<sup>34</sup> The CBJ fishing vessels likely outnumber other vessels in the area.

The salt waters surrounding the proposed annexation areas support many different types of fishing. According to ADF&G, cod, halibut, sablefish, rockfish, Dungeness crab, king crab, tanner crab, sea cucumber, and spot shrimp were all commercially harvested in salt waters around the proposed annexation areas.<sup>35</sup> The 2017 total ex-vessel value of these species taken from the statistical reporting areas around the proposed annexation areas totaled \$8.65 million.<sup>36</sup> Salmon is also harvested in the salt waters around the proposed annexation areas: drift gillnet in the Taku-Snettisham district had \$7.6 million in ex-vessel value in 2017;<sup>37</sup> trolling occurs west of Hawk

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<sup>32</sup> Report from CFEC, Vessel Characteristics by Year, State, Alaska Census Area or Community: Juneau, 2017 data, available on the world wide web at: <https://www.cfec.state.ak.us/vbycen/2017/19.htm> .

<sup>33</sup> Report from CFEC, Vessel Characteristics by Year, State, Alaska Census Area or Community: Angoon, 2017 data, available on the world wide web at: <https://www.cfec.state.ak.us/vbycen/2017/178221.htm> .

<sup>34</sup> Report from CFEC, Vessel Characteristics by Year, State, Alaska Census Area or Community: Hoonah, 2017 data, available on the world wide web at: <https://www.cfec.state.ak.us/vbycen/2017/178132.htm> .

<sup>35</sup> Information reported by Karla Bush, former regional coordinator for shellfish/groundfish, ADF&G, as taken from fish tickets between 2016 and 2018.

<sup>36</sup> *Id.*

<sup>37</sup> ADF&G Fishery Management Report No.18-24, Annual Management Report of the 2017 Alaska Commercial Purse Seine and Drift Gillnet Fisheries, Table 3, page 66. Available on the world wide web at: <http://www.adfg.alaska.gov/FedAidPDFs/FMR18-24.pdf>

Inlet and the Mansfield Peninsula (and when escapement goals allow in the Taku-Snettisham district);<sup>38</sup> and seining occurs in the waters near the proposed annexation areas.<sup>39</sup>

The proposed annexation will not change the economic benefits of commercial fishing in the proposed areas. Annexation will not affect the commercial fishing regulations, seasons, openers, or closures. Additionally, the economic impact of fishing is disassociated with the actual location of the fishery. Instead, the economic benefit occurs in the port where the fish is landed and processed, and will be unaffected by any borough boundary change. The CBJ does not have a specific fish landing tax. The State of Alaska Department of Revenue levies a fisheries business tax (also known as the “raw fish tax”), on businesses and people who process fisheries and export fisheries from Alaska, which is based on the price paid to commercial fisherman for the raw resource.<sup>40</sup> The state collects this from the processors, and the legislature appropriates 50% of the tax to the borough where the processing took place.<sup>41</sup> If there were fish processing plants in the proposed annexation areas, and these areas were annexed, the amount of raw fish tax shared by the state to the CBJ could increase. (The processing plants would also likely be subject to CBJ property tax). As there are no known fish processing plants in the proposed annexation areas, there is no anticipated change to this revenue based on annexation. There is also no anticipated change

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<sup>38</sup> ADF&G Fishery Management Report No. 18-02, Annual Management Report for the 2017 Southeast Alaska/Yakutat Salmon Troll Fisheries, January 2018, pages 10, 39, 71, and 76. Available on the world wide web at: <http://www.adfg.alaska.gov/FedAidPDFs/FMR18-02.pdf>.

<sup>39</sup> ADF&G Fishery Management Report No.18-24, Annual Management Report of the 2017 Alaska Commercial Purse Seine and Drift Gillnet Fisheries, at 7-11: The Northern Southeast Alaska purse seine fishery had ex-vessel value of \$39.1 million in 2017 (Id. at 66), however this encompasses a large area (ADF&G districts 9-14); a percentage of this occurs in the waters to the west of Admiralty Island, and a smaller percentage occurs in the area near Tracy Arm and Glass Peninsula. Seymour Canal is generally closed to seining.

<sup>40</sup> AS 43.75, See Fisheries Business Tax 2017 Annual Report, available on the world wide web at: <http://tax.alaska.gov/programs/programs/reports/Annual.aspx?60633&Year=2017>

<sup>41</sup> *Id.* CBJ obtained approximately \$450,000 in FY19 from this program, deposited in the CBJ Harbor Fund. (Per Sam Muse, CBJ Controller). There is also a separate Shared Fisheries Business Tax Program that distributes monies collected outside municipal boundaries for municipalities that demonstrate they had some sort of cost associated from those fishing activities. CBJ obtained approximately \$10,000 from that program in FY19, but this is not anticipated to change based on annexation. see information from DCCED, available on the world wide web at: <https://www.commerce.alaska.gov/web/dcra/CommunityAidAccountability/SharedFisheriesBusinessTax.aspx>

to the economic benefits or profits of individual fisherman due to the annexation.

### *Tourism*

Tourism is the most important economic activity currently occurring in the areas proposed for annexation. The areas boast a significant amount of smaller-scale tourism operators, both based in the CBJ and those that come to the CBJ for provisioning. Small tour operators, permitted as guide companies by the United States Forest Service (USFS), offer activities such as: camping, fishing, tours (wilderness, educational, and sightseeing), kayaking, guided hunting, hiking, and beach exploration. These commercial activities are conducted within the annexation areas by a large number of companies with USFS land-use permits.<sup>42</sup> The companies are incorporated in a variety of locations. While there are more companies who have USFS permits that are based outside of Alaska than Alaskan companies,<sup>43</sup> there are more companies based in CBJ than any other Alaska community.<sup>44</sup>

The Orca Point Lodge on Colt Island provides tourism business, and was developed without planning by the CBJ. CBJ believes the majority of the clients who come to Orca Point Lodge originate off cruise ships from the CBJ. It is reasonably likely that future growth and tourism development may occur within the proposed annexation areas, such areas should be developed with planning and other municipal services. The CBJ is more capable than any other governmental entity in the region to provide planning and development services for future commercial enterprises within the proposed annexation areas.<sup>45</sup>

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<sup>42</sup> See spreadsheet of permitted companies from the USFS between 2012-2017, attached as Exhibit R. The company names were provided by USFS in response to a FOIA request. CBJ employee Junnie Chup inserted the company names into an updated table, and added the company addresses as listed in the Alaska Corporations database.

<sup>43</sup> See chart. CBJ has counted 10 companies who have their mailing address listed outside Alaska.

<sup>44</sup> The second highest number is for Petersburg, which is not surprising, as GUA 01-05 includes a large swath of the Petersburg Borough.

<sup>45</sup> This was one of the main reasons that the 1990 annexation for part of Admiralty Island was successful: the department found that the CBJ was more capable than any other entity to provide planning and services needed for developing the mine. See Exhibit L, *Report and Recommendation to the Local Boundary Commission Concerning*

*Boat-based tourism*

There are additionally many boats who utilize waters around the proposed annexation area for commercial tourism activities. Many of these boats are tour guides or other tourism-type businesses.

The USFS permits small to medium-sized boats to access areas within the Tongass National Forest. Of the boats permitted by the USFS for game management areas 01-05, 04-08, 04-09, and 04-10, more originate from CBJ than any other community.<sup>46</sup>

The proposed annexation areas are within the USCG Sector Juneau's area, which includes not only the annexation areas but all of Juneau-Hoonah-Haines-Skagway area. Sector Juneau's Fleet of Responsibility are passenger vessels who spend more than 50% of their time in the Juneau-Hoonah-Haines-Skagway area; these vessels are inspected and recorded by the USCG Sector Juneau.<sup>47</sup> Of the 115 passenger vessels the USCG is in charge of inspecting for this region, 48 have their hailing port out of Juneau (including Auke Bay), the most out of any community.<sup>48</sup> The communities closest to the proposed annexation areas have a very small number of the inspected passenger vessels within Sector Juneau: Hoonah (5), Angoon (1), Petersburg (3), Gustavus (1).<sup>49</sup> This also reflects the large group of tours leaving from CBJ.

Additionally, large cruise ships go up Tracy Arm as part of the cruise tours. In 2019, eighteen medium to large sized cruise ships and two small cruise ships, all based outside of Alaska,

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*the: 1) Proposed Annexation of the Greens Creek Mine to the City and Borough of Juneau, 2) Ideal Boundaries of the City and Borough of Juneau*, Department of Community and Regional Affairs, June 1990, p. 18.

<sup>46</sup> Information from Personal communications with Jessica Schalkowski, Special Use Permit Administrator, USFS Tongass National Forest-Admiralty National Monument as calculated by running use reports in game management areas 01-05, 04-08, 04-09, 04-10, for 2012-2017. Juneau had 45 mid-size to small tour boats versus 34 for Sitka and 32 Petersburg, and 15 each for Wrangell and Hoonah, and 13 for Ketchikan. (There were also a small number from Craig, Canada, and the Lower 48.) Email has been provided as Exhibit V.

<sup>47</sup> Personal communication between Lt. Nicolas Capuzzi, Assistant Chief, Inspections Division, USCG Sector Juneau, and Rachel Friedlander, former CBJ Project Manager. Attached as Exhibit W.

<sup>48</sup> The next largest group comes from Sitka, with 30 vessels. See Exhibit W.

<sup>49</sup> See Exhibit W.



are scheduled to make 192 visits carrying 200,000 – 300,000 passengers to Tracy Arm– all either on their way to or on their way from CBJ.<sup>50</sup>

### *Charter fishing*

There are many sport-fishing charter companies that take clients saltwater fishing in the proposed annexation areas. The proposed annexation areas are within ADF&G Southeast Alaska Sportfish Survey Area E, which also includes part of Petersburg Borough, and all of Admiralty Island.<sup>51</sup> Of the charters utilizing this area, the majority come from Juneau (including Auke Bay). In 2016 (the latest year provided by ADF&G), 48 businesses (with 84 vessels) had their port-of offloading as CBJ (including Auke Bay), and 9 (with 25 vessels) from Angoon. There were 3,202 trips offloaded in Juneau (including Auke Bay), compared with 832 for Angoon.<sup>52</sup> The large majority of sport-fishing charters who utilize this area are based out of CBJ. The majority of charter clients are non-residents, and arrive via cruise ships in CBJ.<sup>53</sup> Virtually all cruise ship visitors in Alaska come to CBJ; CBJ has more cruise ship visitors than any other port in Alaska.<sup>54</sup>

### *Guided hunting*

Commercial use of the area also includes non-Alaska hunters who use the proposed annexation areas; Alaska hunting regulations require all non-Alaska residents to use a guide

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<sup>50</sup> Cruise Line Agencies of Alaska, Cruise Ship Calendar for 2019, available on the world wide web at: <http://claalaska.com/wp-content/uploads/2019/04/Tracy-Arm---TA-2019.pdf>, April 4, 2019. Cruise ship capacity for each vessel was identified by Junnie Chup, CBJ legal assistant, by public sources regarding the cruise ship capacities. (See cruise ship capacity chart, attached as Exhibit X).

<sup>51</sup> See map of Southeast Alaska Sport Fish Survey Areas A-H and close-up of Area E, attached as Exhibit S.

<sup>52</sup> See chart provided by ADF&G, attached as T.

<sup>53</sup> McDowell Group, Economic Impact of Douglas Island Pink and Chum, Inc., March 2013, at 23. Available at <http://www.mcdowellgroup.net/wp-content/uploads/2014/12/DIPAC-2013-Economic-Impact-Report-Final.pdf>.

<sup>54</sup> JEDC Juneau and Southeast Alaska Economic Indicators and Outlook, August 2018, at 33: Juneau captures 99% of all cruise ship visitors. See also page 34, comparing the Juneau visitor rates to other southeast communities. (Ketchikan and Skagway have the next highest amount of cruise visitors). Report available on the world wide web at: <https://www.jedc.org/sites/default/files/2018-Indicators-Final-with-cover-letter.pdf>.

when hunting brown bear and mountain goats in these areas.<sup>55</sup> According to the big game guide database, there are nine permitted commercial hunting guides from eight different outfits in the proposed annexation areas.<sup>56</sup> There are more guides based out of CBJ than any other location.<sup>57</sup>

6. CBJ's hatchery supports the proposed annexation areas.

Douglas Island Pink and Chum, Inc., (DIPAC), established in 1976, operates the Macaulay Salmon Hatchery in Juneau, as well as the formerly state-owned Snettisham Hatchery located 40 miles south of downtown Juneau. According to *Economic Impacts of Douglas Island Pink and Chum, Inc.*, McDowell Group, March 2013,<sup>58</sup> DIPAC currently produces four species of Pacific salmon—chum, sockeye, chinook, and coho—from the three hatchery facilities (Macaulay Salmon Hatchery in Juneau, Sheep Creek Hatchery in Juneau, and Snettisham Hatchery south of Juneau) and several release sites, including Limestone Inlet.<sup>59</sup>

Chum salmon have accounted for 94% of DIPAC production by ex-vessel value and 97% by volume of fish.<sup>60</sup> DIPAC salmon accounted for 71% of northern Southeast gillnetters' total ex-vessel earnings between 2008 and 2012.<sup>61</sup> The largest percentage of income was earned by fisherman from CBJ (36%), followed by Haines (27%), followed by Wrangell and Petersburg, and then non-residents.<sup>62</sup> Most of these salmon are sold to processing plants in CBJ (Alaska Glacier Seafoods and Taku Smokeries) and Haines (Ocean Beauty in Excursion Inlet).<sup>63</sup> DIPAC is in the

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<sup>55</sup> Per Ryan Scott, November 8, 2018 letter, attached as Exhibit N.

<sup>56</sup> The annexation areas are within GUA 1-5, 4-8, 4-9, and 4-10, Guide Use area attached as Exhibit M.

<sup>57</sup> See Exhibit U. Of the 8 companies permitted in 2018, four are based out of Juneau. 1 is based out of Sitka. 1 company is based out of Gustavus (with two guides). 1 is based out of Petersburg. 1 is based out of Dillingham, AK. Analysis by Rachel Friedlander, former CBJ Project manager. Source:

<https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/BigGameCommercialServicesBoard.aspx>

<sup>58</sup> Available online at <http://www.mcdowellgroup.net/wp-content/uploads/2014/12/DIPAC-2013-Economic-Impact-Report-Final.pdf>.

<sup>59</sup> *Id.* at 8.

<sup>60</sup> *Id.* at 2.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 16-17.

<sup>63</sup> *Id.* at 19.

same ADF&G management area (Area 111) that starts near Amalga Harbor in the CBJ and continues along to Tracy and Endicott Arms and stops just north of Windham Bay.<sup>64</sup> Accordingly, much of the vibrancy of the fisheries from Haines to Petersburg is sustained by CBJ's hatcheries.

**B. The Proposed Expanded Borough Meets the Requisite Level of Communications and Exchange Necessary to Support an Integrated Borough Government (3 AAC 110.160(b) and (c)).**

3 AAC 110.160(b) provides that an area should contain communications media, and land, water, and air transportation facilities sufficient to allow for the level of communications and exchange necessary to develop an integrated borough government. The regulation specifies that the LBC may consider things such as transportation schedules and cost, geographic and climatic impediments, telephonic and teleconferencing facilities, and electronic media for use by the public.

Transportation to the proposed annexation areas is available by boat or by aircraft. As recognized by the Alaska Supreme Court, travel only available by charter aircraft, snowmachines and dog teams is adequate travel facilities to support borough government in the context of Alaska transportation generally.<sup>65</sup> Boats are similar to snowmachines and dog teams, in that they are private personal transportation facilities, and therefore the existing travel facilities are adequate to support annexation. As far as accessibility, though non-roaded, travel to the annexation area is no more difficult to reach than other non-roaded areas currently within the CBJ boundaries, like the Greens Creek Mine, Shelter Island, and Taku River.<sup>66</sup>

Determining the availability of charter flight service to the proposed annexation area is one

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<sup>64</sup> See commercial salmon and shellfish fisheries chart, attached as Exhibit Y. Available on the world wide web at: [http://www.adfg.alaska.gov/static/fishing/PDFs/commercial/maps/chart05a\\_salm\\_shell\\_juneau.pdf](http://www.adfg.alaska.gov/static/fishing/PDFs/commercial/maps/chart05a_salm_shell_juneau.pdf)

<sup>65</sup> *Mobil Oil Corp v. Local Boundary Commission*, 518 P.2d 92, 100 (Alaska 1974).

<sup>66</sup> As the Department of Community and Regional Affairs concluded with respect to the CBJ's previous request to annex another non-roaded area on Admiralty Island: "[I]n the context of the State of Alaska as a whole, the lack of road access prohibits neither the delivery of desired municipal services nor the exchange necessary to provide responsible municipal government." See Exhibit L: *Report and Recommendation to the Local Boundary Commission Concerning the: 1) Proposed Annexation of the Greens Creek Mine to the City and Borough of Juneau, 2) Ideal Boundaries of the City and Borough of Juneau*, Department of Community and Regional Affairs, June 1990, p. 20.

way the Commission can make a finding that the proposed borough possesses the communication and exchange patterns sufficient to meet the requirements of 3 AAC 110.160(b). Air carriers based in CBJ that could provide charter service to the annexation areas are: Ward Air (who also specifically advertises charters to Pack Creek from Juneau),<sup>67</sup> Alaska Seaplane Services,<sup>68</sup> Wings Airways,<sup>69</sup> Admiralty Air Service,<sup>70</sup> Coastal Helicopters,<sup>71</sup> Temsco Helicopters,<sup>72</sup> and NorthStar Helicopters.<sup>73</sup>

There are currently no scheduled flights identified by CBJ to the proposed annexation areas as there are no established communities within the proposed annexation areas. The following companies take scheduled routes from CBJ over the proposed areas to other outlying communities: Air Excursions, LLC (Juneau to Hoonah, Juneau to Gustavus,), Harris Air (Juneau to Gustavus), and Kalinin Aviation D/B/A Alaska Seaplanes (Juneau to Elfin Cove Seaplane Base, Gustavus, Tenakee, Excursion Inlet, Pelican, and Angoon).<sup>74</sup> These companies could add scheduled flights to the proposed annexation areas should the market warrant.

As far as other methods of communication, there are communication sites within the annexation areas as identified by the USFS. AIDEA has a radio repeater on Washburn Peak on the Glass Peninsula for the Snettisham Hydro project. AT&T has a communication spot at Wheeler Creek in Area C which communicates with Robert Barron Peak on the Mansfield Peninsula and satellite phones. There is a third communication spot on Robert Barron Peak on the Mansfield

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<sup>67</sup> <https://www.wardair.com/our-fleet>

<sup>68</sup> <https://www.flyalaskaseaplanes.com/charters/>

<sup>69</sup> <https://www.wingsairways.com/about-wings>

<sup>70</sup> <http://www.admiraltyairservice.com/>

<sup>71</sup> <https://www.coastalhelicopters.com/contract-charter/>

<sup>72</sup> <http://temscoair.com/charter/>

<sup>73</sup> <http://www.northstartrekking.com/charters.php>

<sup>74</sup> US Department of Transportation T-100 database, available on for download at: [https://www.transtats.bts.gov/Tables.asp?DB\\_ID=110&DB\\_Name=Air%20Carrier%20Statistics%20%28Form%2041%20Traffic%29-%20%20U.S.%20Carriers&DB\\_Short\\_Name=Air%20Carriers](https://www.transtats.bts.gov/Tables.asp?DB_ID=110&DB_Name=Air%20Carrier%20Statistics%20%28Form%2041%20Traffic%29-%20%20U.S.%20Carriers&DB_Short_Name=Air%20Carriers). Air carriers that provide scheduled service are required to report their traffic activity to the U.S. Department of Transportation.

Peninsula with communication towers for the FAA, USCG, and Temsco (a private helicopter company that is based out of CBJ).<sup>75</sup>

Cell service is available for much of the proposed annexation areas, specifically those areas with the largest concentrations of private properties. Voice and data cell service appears to be readily available in the majority of Areas C and D, with coverage also along the northern shoreline of Area B. There appears to be less coverage in Area A and the Glass Peninsula.<sup>76</sup>

Juneau radio stations KTOO, KXLL, and KRNN provide radio coverage in the proposed annexation areas C and D, and the northern shoreline of Area B.<sup>77</sup> Uninhabited Area A is outside of the FCC coverage area.

Given not only the availability of reliable charter flight service, but the historical use of that service to the proposed annexation areas, as well as the availability of voice coverage (and the ability to allow for the expansion of that coverage should population increases so demand), the Commission should find that the proposed annexation area is sufficiently connected to the CBJ's governing seat to meet the requirements of 3 AAC 110.160(b).

### **III. THE CBJ'S POPULATION POST-ANNEXATION IS SUFFICIENTLY LARGE AND STABLE ENOUGH TO SUPPORT THE RESULTING BOROUGH (3 AAC 110.170).**

The CBJ has already been identified by the department as a "one of the key metropolitan

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<sup>75</sup> See Exhibit Z, Information from USFS in response to FOIA request on November 21, 2018.

<sup>76</sup> See Exhibit KK, pages 1-2 is GCI coverage map, available from the world wide web at <http://gci.cellmaps.com/cdma.html>; page 3, the AT&T coverage map, available from the world wide web at <https://www.att.com/maps/wireless-coverage.html>; page 4, the Verizon Wireless coverage map, available on the world wide web at <https://www.verizonwireless.com/featured/better-matters/?map=4glte#maps>; and page 5 the T-mobile coverage map, available on the world wide web at: <https://www.t-mobile.com/coverage/coverage-map>.

<sup>77</sup> See Exhibit LL, the contour line of which shows the official FCC coverage area for KXLL, KTOO, and KRNN. The colors indicated projected signal strength, with red being the strongest. Although the map is labeled for KXLL, it shows the coverage area and projected signal strength for all three stations. (Map and explanation was obtained by Bill Legere from KTOO, through email communication with Tim Felstead, CBJ Planner II in the Community Development Department).

EXHIBIT E

areas of Alaska” that had a population “ample for purposes of borough government.”<sup>78</sup>

According to the Juneau Economic Development Council, Juneau’s population has remained stable for the last 10 years, although it has slightly declined the past two years.<sup>79</sup> Post-annexation, the CBJ’s population will continue to exceed the population of all but 4 of the other successfully operating borough governments:

<b>Boroughs</b>	<b>2018 Population<sup>80</sup></b>	<b>Sq Miles<sup>81</sup></b>	<b>Density (pop/sq mile)</b>
Aleutians East	2,959	15,405	0.192
Anchorage Municipality	295,365	1,704*	173.27
Bristol Bay	9879	503*	1.74
Denali	1,825	12,780	0.14
Fairbanks North Star	97,121	7,338 *	13.23
Haines	2,480	2,625	0.94
CBJ (current)	32,247	3,248	9.93
CBJ post-annexation	32,263	4,676	6.9
Kenai Peninsula	58,471	25,600	2.28
Ketchikan Gateway	13,754	4,858*	2.83
Kodiak Island	13,136	21,908	0.60
Lake and Peninsula	1,663	25,061	0.07
Matanuska-Susitna	105,743	24,607 *	4.3
North Slope	9,925	84,983	0.12
Northwest Arctic	7791	40,762* <sup>82</sup>	0.19
Petersburg	3,198	3,829	0.83
Sitka	8,652	2,870	3.014
Skagway	1,088	443	2.46
Wrangell	2,426	3,465	0.70
Yakutat	523	9,460 <sup>83</sup>	0.06

<sup>78</sup> See Exhibit L: *Report and Recommendation to the Local Boundary Commission Concerning the: 1) Proposed Annexation of the Greens Creek Mine to the City and Borough of Juneau, 2) Ideal Boundaries of the City and Borough of Juneau*, Department of Community and Regional Affairs, June 1990, p. 21.

<sup>79</sup> Juneau & Southeast Alaska Economic Indicators, Juneau Economic Development Council, 2018 at page 22, available at: <https://www.jedc.org/economic-indicators>.

<sup>80</sup> Data from Alaska Department of Labor and Workplace Development, Research and Analysis available at <http://live.laborstats.alaska.gov/pop/>

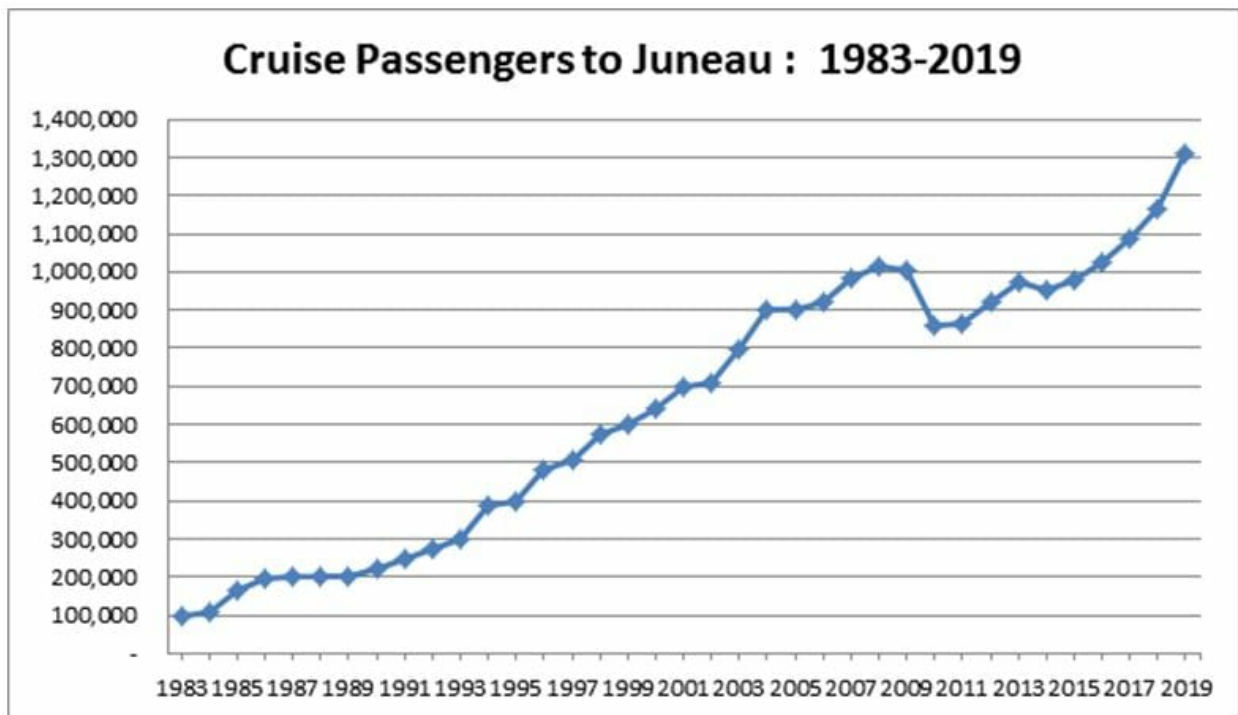
<sup>81</sup> Unless noted with a \*, data is taken from municipal certificates at Alaska Department of Commerce, Community, and Economic Development, Local Boundary Commission, available at:

<https://www.commerce.alaska.gov/web/dkra/LocalBoundaryCommission/MunicipalCertificates.aspx>. Estimates noted with a \* are taken from the US Census: <https://www.census.gov/quickfacts>

<sup>82</sup> <https://www.nwabor.org/about/>

<sup>83</sup> <https://yakutatak.govoffice2.com/>

Thus, the CBJ’s population is large enough and stable enough to support any necessary expansion of essential services to the proposed annexation areas. Indeed, the CBJ has a history of absorbing increases in the demand for services as evidenced by the CBJ’s response to the rapid growth of the cruise ship industry beginning in the early 1980’s and continuing through today. (See chart below). There are approximately 1.3 million cruise ship passengers scheduled to come to CBJ in summer 2019, more than double the 600,000 passengers who came in 1997. Despite the significant pressure on the CBJ’s infrastructure caused by the cruise ship explosion, the CBJ population has met the need for increased services.<sup>84</sup>



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<sup>84</sup> See KTOO article, from Kirby Day, director of Tourism Best Management Practices: <https://www.ktoo.org/2019/04/08/whats-in-store-for-juneau-this-cruise-season/>

<sup>85</sup> CBJ Docks & Harbors. Available on CBJ website: <https://beta.juneau.org/newsroom-item/cbj-already-setting-the-stage-for-tourism-growth>.

Of additional significance, the CBJ's current population already supports the provision of limited services to the proposed annexation area.<sup>86</sup> For example, while the U.S. Coast Guard provides emergency medical response, patients are usually transported to Bartlett Regional Hospital, owned and operated by the CBJ.<sup>87</sup> Medical evacuations in the proposed area of annexation are sent to BRH as the closest hospital to the proposed annexation areas unless the patient's medical status warrants a direct transfer to a higher level of care in Anchorage or Seattle.<sup>88</sup>

Given the possibility of increased mining in the proposed annexation areas, the commercial business on Colt Island, and the increase in tour operations in the proposed annexation area, it is time to add the proposed land to the CBJ.<sup>89</sup> The CBJ has met the need for increased services as a result of rapid growth in the past, and the addition of the annexation area, even with its likely need for services, will cause no significant demands on the CBJ.

As the CBJ can demonstrate a sufficiently large and stable population to provide essential services to the area, and given the fact that the CBJ does so currently, the Commission should find the standards outlined in 3 AAC 110.170 met.

#### **IV. THE ECONOMY WITHIN THE PROPOSED EXPANDED BOROUGH INCLUDES THE HUMAN AND FINANCIAL RESOURCES NECESSARY TO PROVIDE ESSENTIAL MUNICIPAL SERVICES (3 AAC 110.180)**

In order to analyze whether the proposed expanded boundaries include sufficient resources to provide the development of essential municipal services, the Commission may consider the

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<sup>86</sup> The limited nature of the services provided should be immaterial to the Commission's analysis. "[B]oroughs are not restricted to the form and function of municipalities. They are meant to provide local government for regions and encompass lands with no present municipal use." *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974).

<sup>87</sup> Bartlett Regional Hospital is the only hospital in Northern Southeast Alaska.

<sup>88</sup> Personal communications with Charles Bill, CEO of Bartlett Regional Hospital.

<sup>89</sup> The department recommended annexing this property in 1990. See Exhibit L: *Report and Recommendation to the Local Boundary Commission Concerning the: 1) Proposed Annexation of the Greens Creek Mine to the City and Borough of Juneau, 2) Ideal Boundaries of the City and Borough of Juneau*, Department of Community and Regional Affairs, June 1990, p. 20, 23, 26.



reasonably anticipated functions of the borough in the proposed area, anticipated new expenses, the current income and anticipated ability to collect additional revenue, the impact on the existing borough's budget, the economic base of the proposed annexation area, the valuation of taxable property in the area, land use in the area, existing and reasonably anticipated expansion, and the need for skilled and unskilled labor in the area to serve the borough government post-annexation. (3 AAC 110.180). As discussed below, the CBJ has sufficient resources to continue operating efficiently and effectively with the inclusion of the proposed annexation area.

**A. Reasonably Anticipated Functions of the Borough in the Proposed Area.**

The reasonable likelihood of expanded commercial development in the area suggests there will be a likely increase in the demand for services. Should that occur without annexation, the residents of the CBJ would be forced to unilaterally subsidize any public service costs. As the Department of Community and Regional Affairs found with respect to the demand created when Greens Creek Mine was opened, the CBJ should be entitled to the property tax revenue for the areas it provides support services to, especially as the CBJ would experience the greatest impact from future development.<sup>90</sup>

The CBJ anticipates providing the following services:

- **Emergency Services:** The proposed annexation areas are outside the Roaded Service area, but Emergency Services will be provided. The cost is unknown, and will depend on the number of medivacs that are needed. (The air medevac employs private sector aircraft at no cost to the CBJ. The cost will be any additional work time or overtime of CBJ employees). Commercial development would be required to comply with the fire code, and fire protection systems consultation and investigation would be provided on an "as-needed" basis. Given the anticipated limited demand, the CBJ's current emergency services staff are more than sufficient to provide this service.

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<sup>90</sup> See Exhibit L: *Report and Recommendation to the Local Boundary Commission Concerning the: 1) Proposed Annexation of the Greens Creek Mine to the City and Borough of Juneau, 2) Ideal Boundaries of the City and Borough of Juneau*, Department of Community and Regional Affairs, June 1990, p. 20

- Property taxation: The Assessor’s Office would be responsible for valuing the property within the annexed area. An estimated cost of \$7,500 has been added to secure private sector transportation to allow the Assessor’s Office staff transportation to inspect the area. No other additional costs would be incurred or additional staff necessary.
- Sales taxation: No additional staff would be incurred by extending sales tax oversight to the area but approximately \$2,500 would be needed to cover the additional costs for monitoring this activity.
- Community Development: The CBJ’s Community Development Department (CDD) would provide some services in the annexation area. For example, recreational cabins built in the annexation areas would be required to obtain a free permit pursuant to CBJ 19.01.105.2.9. Any permanent residence or commercial buildings would need to go through the building permit process. Planning would be limited as the area would likely be designated “Resource Development” land under the CBJ’s Comprehensive Plan.<sup>91</sup> With respect to zoning, the annexed area would be zoned “RR” or “Rural Reserve.”<sup>92</sup> Both the Kensington and Greens Creek Mines are in an “RR” district and permitted through the Allowable Use Permit process. Potential other commercial development in the proposed annexation areas would also likely be permitted under the Conditional or Allowable Use process, but it depends on the actual proposal submitted. Unless substantial development is proposed in the annexed territory, CDD estimates that costs to the CBJ would be inconsequential. Additional departmental staffing is not anticipated at this time. The Rural Reserve zoning designation will also help protect the remote rural lifestyle by generally prohibiting commercial development unless through the Conditional or Allowable Use Permit process.<sup>93</sup>

## **B. Anticipated New Expenses Resulting from Annexation.**

The CBJ anticipates very few expenses resulting from annexation. Total anticipated expenditures, related to a small increase in expenses incurred by the CBJ Finance Department, and the required local contribution to education, equals \$84,000 for FY20 and FY21.<sup>94</sup>

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<sup>91</sup> The CBJ’s 2013 Comprehensive Plan is available for viewing at:  
<file:///I:/ASSEMBLY/FY2019/Annexation%20Petition/20170316UPDATEComp.Plan2013WEB.pdf>.

<sup>92</sup> CBJ Code 49.25.130.

<sup>93</sup> CBJ Code 49.25.200.

<sup>94</sup> See Exhibit C with Petition.

**C. Actual Income and Anticipated Ability to Increase Income and Revenue.**

The majority of increased income and revenue to the CBJ resulting from the proposed annexation would be comprised of both real property tax and sales tax. Real property tax values are discussed below. The value of annual sales in the annexation areas that would be subject to CBJ sales taxes is estimated to be \$4,762,025 during FY20. At the current CBJ sales tax levy, this would generate an estimated \$240,133 for FY20 (this amount excludes expected exemptions). Collections are anticipated to increase by approximately 2% each year, for an estimated sales tax of \$244,902 in FY21 (the year of annexation) and \$249,800 in FY22 (the year after annexation).<sup>95</sup> Approximately 60% of the sales tax levy would be used for operations and 40% for general community capital improvements. Given the fact that the vast majority of private landowners and many of the private commercial entities using the area either are located in CBJ or have a significant presence in CBJ, collecting this revenue is not much more effort than is already expended by the CBJ Sales Tax collections office, and as the process for sales tax collection is already well-established in the CBJ, the appreciable costs to the CBJ in extending this service to the annexation area are estimated to be low.<sup>96</sup>

**D. Effect on the CBJ's Existing Budget.**

The CBJ expects there will be no immediate material increase or decrease to the CBJ's existing budget if annexation were approved.<sup>97</sup>

**E. Economic Base of the Proposed Annexation Area and Current CBJ.**

As explained above, the economic base in the proposed area is primarily tourism, which is a steadily growing industry within the CBJ and Southeast Alaska. Given that the majority of small

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<sup>95</sup> This is reflected in the Revenue Summary Annexed Area chart in Exhibit C.

<sup>96</sup> See Exhibit C. Finance's estimate is \$2,500 for monitoring the sales in the proposed areas.

<sup>97</sup> See Petition for more information.

tour operators, cruise ships, and hunting and fishing guides using the area are either based out of or use the CBJ as either their sole or primary Southeast Alaska provisioning source, it is clear that the CBJ has sufficient resources to support the proposed annexation.

The CBJ's average income is higher than Alaska or national averages.<sup>98</sup> In 2017 the CBJ's existing population earned a total of \$903.9 million, with an average wage of \$51,063, an increase from the prior year.<sup>99</sup> CBJ's per capita income has continued to grow.<sup>100</sup> This historically positive per capita wage of the current CBJ population, along with the stability of the population and revenue as described herein, demonstrates that the CBJ has sufficient financial and human resources to support any necessary expansion of government and services to the proposed annexation area.

**F. Valuation of Taxable Property in the Area.**

According to the CBJ's Assessor's findings, it is expected that the value of taxable real property in the area proposed for annexation is \$28,136,200.<sup>101</sup>

**G. Land Use in the Proposed Annexation Area.**

The use of the proposed annexation area is discussed above.

**H. Existing and Reasonably Anticipated Commercial Expansion.**

In addition to the commercial use of Orca Point Lodge on Colt Island as a tourist destination, other areas within the USFS property in the proposed annexation areas see large numbers of commercial tour visitors. (See above). There are no current commercial expansion plans known to the CBJ, but future mine expansions or commercial cruise-ship related activities

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<sup>98</sup> Juneau and Southeast Alaska Economic Indicators and Outlook, August 2018, at 17. Available at: <https://www.jedc.org/sites/default/files/2018-Indicators-Final-with-cover-letter.pdf>.

<sup>99</sup> *Id.* at 2.

<sup>100</sup> *Id.* at 17.

<sup>101</sup> See Petition Section 11.

seem reasonably likely. If annexed, future commercial expansion would be developed through CBJ permitting and land use process, and would result in a more planned development.

As demonstrated above, there will be little to no added expense to the CBJ as a result of annexation and the current CBJ government consists of sufficient human resources to absorb the small increase incurred in extending services to the proposed annexation area. The CBJ's annexation proposal is sound – both fiscally and with respect to the human resources needed to serve the needs of the proposed annexation area. Accordingly, the Commission should find the standards outlined in 3 AAC 110.180 satisfied.

**V. THE PROPOSED EXPANDED BOUNDARIES CONFORM GENERALLY TO THE NATURAL GEOGRAPHY AND INCLUDE ALL LAND AND WATER NECESSARY TO PROVIDE THE DEVELOPMENT OF ESSENTIAL MUNICIPAL SERVICES (3 AAC 110.190)**

The Commission must find that the post-annexation boundaries conform generally to the natural geography and include all land and water necessary to provide the development of essential municipal services.<sup>102</sup> In making its finding under 3 AAC 110.190, the Commission may consider the following factors: land use and ownership patterns; ethnicity and cultures of the people in the area; existing and reasonably anticipated transportation patterns; and natural geographical features. As discussed above, the proposed annexation areas are primarily used by CBJ residents. There are no known independent communities in the proposed annexation areas, and the vast majority of the private properties have recreational structures or are undeveloped, with the exception of Orca Point Lodge on Colt Island, and 6 possible full-time residents.

As detailed herein, the proposed expanded boundaries conform to the natural geography and, by following the natural boundaries, the proposed annexation area contains all the land and

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<sup>102</sup> 3 AAC 110.190.

water necessary for the CBJ to provide the essential services outlined above.

**A. Land Use and Ownership.**

While the area is primarily uninhabited, it is regularly used by CBJ residents – both recreationally and commercially – and the majority of privately-held land is held by CBJ residents and businesses.

1. Commercial Ownership

There are very few commercial properties in the proposed annexation area. As described above, those that are located within the proposed annexation areas or own properties within the proposed annexation areas (Greens Creek Mine, Orca Point Lodge, Four Seasons Marine), are already based within the CBJ or have strong ties to the CBJ.<sup>103</sup>

2. Individual Private ownership.

The large majority of the land in the proposed annexation areas is public property through the United States Forest Service. Of an estimated 213 individual private property owners, the vast majority are CBJ residents. Approximately six list their registered voting addresses as full-time in the proposed annexation areas, while another three registered voters are listed for towns in Southcentral and Northern Alaska,<sup>104</sup> and one from Gustavus. Of the non-registered voters, the largest group are non-Alaska residents. With the exception of the one property owner identified as possibly living in Gustavus, none of the property in the proposed annexation areas are owned by individual owners from another Southeast Alaska community.<sup>105</sup>

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<sup>103</sup> There were two parcels owned by mining companies in Area C whose contact information could not be found, and ownership may be dissolved.

<sup>104</sup> These individuals are registered to vote within the Municipality of Anchorage, Whittier, and Fairbanks.

<sup>105</sup> For more information, see Section 5 of the petition and Exhibit B of the petition.

### 3. Non-profit Organization Ownership

As explained above, the two non-profit organizations who own or manage property on the Mansfield Peninsula are also based in the CBJ.

### 4. Subsistence use

Annexing the proposed properties to the CBJ does not change the ability for any rural residents of Angoon, Hoonah, or surrounding areas from obtaining federal subsistence permits.

Annexing to the CBJ could change the subsistence ability of any permanent residents who currently reside full-time in the annexation areas. This appears to be at most 6 people. The following is CBJ's current understanding of the various subsistence harvests:

*USFWS subsistence species for the harvest of wildlife on Federal Public Lands:*

According to the USFWS, all communities and areas of Alaska are considered rural for federal subsistence regulations, except areas defined on maps as non-rural areas.<sup>106</sup> To qualify to hunt, trap, or fish under the Federal subsistence regulations, the person must have their primary, permanent place of residence in a rural area.<sup>107</sup> This applies to federally-recognized subsistence hunting on federal public lands, and does not apply to hunting on state or private or native corporation lands.<sup>108</sup> The entire existing CBJ is not defined as non-rural for purposes of subsistence harvest of mammals<sup>109</sup> on federal public land: the current non-rural area is defined by the USFWS as Juneau, Douglas, and West Juneau as defined by the US Census Bureau, and does not encompass all of the current CBJ (for example, the backside of Douglas, Shelter Island or the area

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<sup>106</sup> USFWS 2018 Federal Subsistence Management Regulations for the Harvest of Wildlife on Federal Public Lands in Alaska, page 6. Available on the world wide web at: [https://www.doi.gov/sites/doi.gov/files/uploads/2018-20\\_wildlife\\_regs\\_book\\_final\\_web\\_3.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/2018-20_wildlife_regs_book_final_web_3.pdf).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 12.

<sup>109</sup> These regulations apply to mammals: ungulates dall sheep, deer, moose, beaver, lynx, marten, other, sheep, wolf, wolverine, bear (black and brown), goats, coyotes, fox, hare, grouse, ptarmigan, river otter, mink, weasel, muskrat, squirrels, marmots. Separate regulations apply to the subsistence harvest of halibut, marine mammals, and migratory birds. *Id.* at 14.

on Admiralty: these are not defined as non-rural).<sup>110</sup> The proposed annexation areas are not part of the currently defined non-rural area. Residents not within the non-rural area would not lose their designation, unless rule-making was completed by the Federal Subsistence Board, which would have their own public notification requirements. Additionally, the USFWS has confirmed that they have not had any subsistence permits processed through their Office of Subsistence Management for the proposed annexation areas within the past five years, and that there may be only one qualified hunter in the proposed annexation areas (Mansfield Peninsula), and so even if annexation started a rule-making process that changed the defined non-rural area, the effects would be minimal.<sup>111</sup>

Importantly, annexation to the CBJ would not affect the subsistence rights of any residents outside the proposed annexation area: specifically it would not affect the rights of residents of Angoon, Hoonah, or other rural communities from subsistence hunting as allowed under USFWS regulations on federal land.<sup>112</sup>

For individuals with subsistence USFWS rights, the users may be able to utilize the USFS land within the proposed areas for their harvests. USFWS unit 1C includes the proposed annexation area A within the subsistence use area.<sup>113</sup> USFWS Unit 4 includes the proposed annexation areas B-D.<sup>114</sup> Subsistence harvesting is open within the non-private property of these two units, as allowed by the regulations. The authority for these units fall under the USFS Juneau

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<sup>110</sup> Federal Subsistence Management Regulations for the Harvest of Wildlife on Federal Public Lands in Alaska, pages 1, 6, and map on page 8. Information also obtained through personal communications with Theo Matsukowitz, Supervisor Regulations Specialist, USFWS, Office of Subsistence Management, Anchorage. In comparison, the entire Fairbanks North Star Borough is defined as non-rural. (*Id.* at 6).

<sup>111</sup> Email from Marci Johnson, USFS Wildlife & Fisheries Biologist, relating information from Derick Hildreth, USFWS Office of Subsistence Management, attached as Exhibit AA.

<sup>112</sup> Federal Subsistence Management Regulations for the Harvest of Wildlife on Federal Public Lands in Alaska, at 6.

<sup>113</sup> Federal Subsistence Management Regulations for the Harvest of Wildlife on Federal Public Lands in Alaska, map on page 24 and explanation at page 25.

<sup>114</sup> *Id.* at 34.



Ranger District.<sup>115</sup>

*Halibut:*

Subsistence Fishing for Halibut is managed by the National Marine Fisheries Service under the Restricted Access Management Program.<sup>116</sup> An individual domiciled in a rural community (defined to include Angoon and Hoonah), may apply for a subsistence halibut registration certificate.<sup>117</sup> Additionally, any individual who is a member of an Alaska native tribe with customary and traditional use of halibut would maintain those same rights.<sup>118</sup> Annexation of the proposed properties within the CBJ would not affect any subsistence rights of residents of the surrounding communities, such as Hoonah or Angoon, or the rights of an Alaska tribal member who has rights under 50 CFR 300.65(g)(2).

The CBJ is defined as a non-rural area for the NMFS subsistence halibut program.<sup>119</sup> Residents of the CBJ are not eligible to harvest subsistence halibut unless they otherwise qualify as an eligible member of certain native tribes.<sup>120</sup> The National Marine Fisheries Service currently includes Admiralty Island (with the exception of the part of Admiralty currently within the CBJ) within a Subsistence Halibut Rural Area.<sup>121</sup> CBJ has consulted with NOAA, who has explained that persons living within the CBJ boundaries (before or after a change to the boundaries), would not be eligible according to the regulations as currently written, however, those regulations could be revised through consideration by the North Pacific Council and NMFS to ensure that remote

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<sup>115</sup> *Id.* at 146.

<sup>116</sup> [http://www.adfg.alaska.gov/index.cfm?adfg=subsistence\\_faqs#QA17](http://www.adfg.alaska.gov/index.cfm?adfg=subsistence_faqs#QA17);  
<https://www.fisheries.noaa.gov/alaska/subsistence-fishing/subsistence-halibut-fishing-alaska>.

<sup>117</sup> <http://alaskafisheries.noaa.gov/fisheries/subsistence-halibut>; 50 CFR 300.61; 50 CFR 300.65(g)(1).

<sup>118</sup> 50 CFR 300.61; 50 CFR 300.65(g)(2).

<sup>119</sup> 50 CFR 300.65(g)(3) and (g)(4).

<sup>120</sup> 50 CFR 300.65(g)(2-4).

<sup>121</sup> Figure 3 to Subpart E of 50 CFR 300, attached as Exhibit BB.

users captured by the borough remain eligible.<sup>122</sup>

The regulations also have a specific designation of non-subsistence marine waters, which includes the waters of Stephens Passage to where it connects with Berners Bay (which includes the saltwater within the CBJ down to Tracy Arm, including those waters adjacent to CBJ's proposed annexation Areas B and D), and the waters of Chatham straight and contiguous waters north of Point Marsden and east of Point Coverden (this is the waters adjacent to proposed annexation Area D and part of Area C).<sup>123</sup> These areas are closed to subsistence halibut fishing even for those with eligible permits.<sup>124</sup> There is no indication that these areas would change with annexation and these boundaries would remain effective unless the North Pacific Council and NMFS took affirmative action to change the non-subsistence marine water boundaries by regulation.<sup>125</sup>

*Marine Mammals:*

Marine Mammal takes are prohibited under the Marine Mammal Protection Act, 16 USC 1361-1407. There is an exception for Alaska Natives. Mammals such as sea otters may be harvested in accordance with federal regulations by members of certain Alaska tribes as defined by federal law and as managed by USFWS.<sup>126</sup> Other marine mammals (such as seals) may be harvested by Alaska Natives in accordance with NMFS.<sup>127</sup> This would not change by the CBJ annexing the properties.

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<sup>122</sup> Personal communication from Suja Hall, NMFS Program Administrator, Restricted Access Program, by email on July 18, 2019.

<sup>123</sup> 50 CFR 300.65(h)(3)(ii). See also map in Exhibit BB.

<sup>124</sup> 50 CFR 300.65(h)(3).

<sup>125</sup> Personal communication from Suja Hall, NMFS Program Administrator, Restricted Access Program, by email on July 18, 2019.

<sup>126</sup> See <https://www.fws.gov/alaska/pages/marine-mammals/alaska-sea-otter-hunting-handicrafting>.

<sup>127</sup> <https://www.fisheries.noaa.gov/alaska/outreach-and-education/marine-mammal-parts-and-products-alaska>.

*Migratory Birds:*

Migratory bird hunting is managed under 50 CFR Part 2 and Alaska regulations at 5 AAC 85.065 and is co-managed by the state and federal government through the Alaska Migratory Bird Co-Management Council. The subsistence spring/summer harvest of birds and eggs is limited to residents of certain villages within an included harvest area: in Southeast Alaska this only includes Hoonah, Craig, and Hydaburg.<sup>128</sup> Southeast Alaska residents outside of these communities cannot participate. The harvest areas for the community of Hoonah is described as National Forest Lands in Icy Strait and Cross Sound.<sup>129</sup> None of this would change with the proposed annexation.

*State-Managed Subsistence Hunts:*

The State of Alaska subsistence harvest is not based on where the individuals live, it is based on where they harvest. Alaska residents, who have the required twelve months of residence, may participate in state-administered subsistence fisheries and subsistence hunts, as long as it is not within a non-subsistence use area.<sup>130</sup> <sup>131</sup> The Alaska Board of Fisheries and the Alaska Board of Game may not authorize subsistence fishing or hunting within non-subsistence use areas.<sup>132</sup> The ADF&G has already defined most of the areas around CBJ as non-subsistence use areas.<sup>133</sup> The currently defined ADF&G non-subsistence use area includes all the proposed annexation areas B, C, D.<sup>134</sup> This would not change with annexation. Area A is currently outside of the defined non-subsistence use area; there is no indication that this would change with annexation. Personal use

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<sup>128</sup> USFWS 2018 Alaska Subsistence Spring/Summer Migratory Bird Harvest Regulations, available at [https://www.fws.gov/r7/ambcc/Regs/18%20Regs%20Book-3-13-18\\_Web.pdf](https://www.fws.gov/r7/ambcc/Regs/18%20Regs%20Book-3-13-18_Web.pdf), page 2-3.

<sup>129</sup> *Id.* at 14.

<sup>130</sup> [http://www.adfg.alaska.gov/index.cfm?adfg=subsistence\\_faqs](http://www.adfg.alaska.gov/index.cfm?adfg=subsistence_faqs), FAQs #1-5.

<sup>131</sup> Non-subsistence use areas are defined under Alaska Statute 16.05.258(c) as areas where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life. See also <http://www.adfg.alaska.gov/index.cfm?adfg=subsistence.nonsubsistence>.

<sup>132</sup> AS 16.05.258(c), see also <http://www.adfg.alaska.gov/index.cfm?adfg=subsistence.nonsubsistence>.

<sup>133</sup> *Id.* See map of ADF&G non-subsistence use areas, available on:

[http://www.adfg.alaska.gov/index.cfm?adfg=subsistence.nonsub\\_detail&area=Juneau](http://www.adfg.alaska.gov/index.cfm?adfg=subsistence.nonsub_detail&area=Juneau), attached as Exhibit CC.

<sup>134</sup> *Id.*

fisheries provide opportunities for harvesting fish with gear other than a rod and reel, in addition to sport fishing as allowed under regulations, and this would not change with annexation.<sup>135</sup> The general ADF&G hunting regulations that provide for taking wildlife in non-subsistence use areas also have no reason to change if there was a CBJ boundary change due to annexation.<sup>136</sup>

**5. Tourism, recreational use and land ownership.**

As described more fully above, use of the area by CBJ residents for hunting and commercial guiding, the increased commercial tourism activities (with virtually all providers being CBJ-based or connected), and the fact that the vast majority of privately-held land is held by either CBJ residents or CBJ-based entities, support finding that the proposed expanded boundaries satisfy the requirements of 3 AAC 110.190.

**B. Ethnicity and Culture.**

According to *Haa Aaní, Our Land, Tlingit and Haida Land Rights and Use*,<sup>137</sup> the Auk people of Tlingit had their historical boundaries to include the existing northern half of the CBJ and the proposed annexation areas B, C, and D.<sup>138</sup> Proposed annexation Area A and the western half of Area B were part of the Taku/Douglas Tlingit people area, which is also located in the southern portion of the existing CBJ.<sup>139</sup> The main village of the Auk people was in Auk Bay, and the Taku village was originally at the mouth of the Taku River, later moved to the vicinity of Bishop Point, and then again to Douglas Island across the channel.<sup>140</sup> All of these locations are within the current CBJ.

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<sup>135</sup> <http://www.adfg.alaska.gov/index.cfm?adfg=subsistence.nonsubsistence>.

<sup>136</sup> <http://www.adfg.alaska.gov/index.cfm?adfg=subsistence.nonsubsistence>.

<sup>137</sup> Walter R. Goldschmidt and Theodore H. Haas, Edited with an Introduction by Thomas F. Thornton (University of Washington Press, 1998). Portions have been provided as Exhibit DD with this brief.

<sup>138</sup> See Exhibit DD, Chart 4. See also Exhibit II, page 2, which overlies these approximate boundaries onto the CBJ proposed annexation areas.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 37.

EXHIBIT E

The Auk recognized their territory as including Admiralty Island, including Hawk Inlet, Mansfield Peninsula,<sup>141</sup> and including Oliver Inlet and the Seymour Canal, but not the outside coast of the Glass Peninsula.<sup>142</sup> Auk elders recognized that there was an Auk village at the northern end of Admiralty Island.<sup>143</sup> The tribes of Hoonah and Angoon also historically recognized that the Mansfield Peninsula was claimed by a certain clan of the Auk tribe-the Wooshkeetan clan who are generally understood by experts as having their home now in Juneau, with their former village in Auk.<sup>144</sup> The Seymour canal was recognized by Angoon and Kake natives as belonging to the Auk clan, which was supported by Auk elders,<sup>145</sup> with the belief that Juneau people used that region by coming through the portage on the north end.<sup>146</sup> These areas are located within proposed annexation areas C, D, and part of B.

The Taku people (Tlingit tribe associated with Douglas Island and southern CBJ) claimed Stephens passage north of Holkam Bay, including Endicott Arm and up to Taku Inlet, as well as the west shore of Stephens passage as far south as the tip of the Glass Peninsula.<sup>147</sup> This area corresponds with the proposed annexation area A and the remainder of area B.

There were some reports that people from Angoon did occasionally go as far as Cube Cove, (near the southern border of Area C<sup>148</sup>) to fish and hunt, although there is agreement that Hawk Inlet, Wheeler Creek, and Game Cove were controlled by tribes from Juneau.<sup>149</sup> The remainder of the territory said to be used by the Angoon tribe (from Florence River south),<sup>150</sup> is not being

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<sup>141</sup> *Id.* at 41.

<sup>142</sup> *Id.* at 37.

<sup>143</sup> *Id.* at 112-114.

<sup>144</sup> *Id.* at 41.

<sup>145</sup> *Id.* at 91-92.

<sup>146</sup> *Id.* at 91.

<sup>147</sup> *Id.* at 38, 43.

<sup>148</sup> See maps located in Exhibit A of the petition

<sup>149</sup> Exhibit DD at 67.

<sup>150</sup> *Id.* at 67.

proposed for annexation. The possessory rights of Angoon generally extended from Florence Creek south to Tyee creek along the Chatham Strait Coast.<sup>151</sup> The area historically claimed by Angoon is not being proposed for annexation.<sup>152</sup>

This is further supported by the traditional Kwan areas documented by the University of Alaska Fairbanks, Traditional Tlingit Country map, which shows that the tribe (Xutsnoowu) in the lower half of Admiralty Peninsula and Angoon was not the same as the Juneau (A'aak'w) and Taku (T'aaku) based tribes which used the proposed annexation areas.<sup>153</sup>

**C. The Post-Annexation Boundaries Conform to the Natural Geography by Utilizing the Boundaries of Major Watersheds in the Area.**

The use of watersheds to define jurisdictional areas has long been recognized as a best management practice, in that it assures that natural resources found in watershed areas are not divided for artificial reasons. The watershed boundaries in the proposed annexation have been delineated by the CBJ cartographer, as defined by using the US. Geological Survey National Hydrological Dataset. Historically, these same watersheds have been used to delineate areas used for state and federal management of land and ocean resources in the proposed annexation area for many years.

*Area A:*

The proposed annexation's southern boundary is defined by the northern limit of the Petersburg Borough boundary, forming the hydrographic divide between the Tracy Arm and the Endicott Arm watersheds, and extending easterly to the Alaska-Canada border.<sup>154</sup> Portions of Tracy Arm and its associated watershed are already in the current CBJ and (essentially) the

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<sup>151</sup> *Id.* at 72.

<sup>152</sup> *Id.* at 67-72.

<sup>153</sup> See Exhibit II, page 1 with these boundaries compared to the proposed annexation areas.

<sup>154</sup> See maps located in Exhibit A of the petition.

remainder of this watershed is included in the State's Model Borough Boundary for CBJ. Tracy Arm and its associated watershed are heavily used by CBJ residents and CBJ-based commercial interests. During the summer and shoulder tourist seasons, multiple excursions operate out of the CBJ to visit these waters, culminating with views of the North and South Sawyer glaciers (tidewater glaciers at the end of Tracy Arm). Several major cruise ship operations visit these waters as part of their standard excursions in and out of CBJ.<sup>155</sup> This area will ensure that the entirety of Tracy Arm will be part of the CBJ, and that there is not a remnant remaining in the unorganized borough.

*Area B:*

Area B includes the Glass Peninsula, and the Pack Creek watersheds, starting from the existing CBJ boundary on Admiralty. It contains the watershed of King Salmon River, Swan Cove, Pack Creek, and the headwaters of the Seymour Canal, Fool Inlet, and Frontal Seymour Canal and Frontal Stephens passage.<sup>156</sup> This area has been extended slightly south near Pack Creek to ensure the entire Pack Creek watershed is encompassed.

*Area C:*

Area C starts at the existing CBJ boundary near Greens Creek, and continues south to encompass the entire Wheeler Creek and Peanut Lake watershed.<sup>157</sup> This area has been extended from the CBJ model borough boundary purposefully to encompass all of the Wheeler Creek watershed, and to not divide that by a proposed borough boundary.

*Area D:*

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<sup>155</sup> See Exhibit X, the calendar showing trips to Tracy Arm.

<sup>156</sup> See map and the legal description in Exhibit A of the Petition.

<sup>157</sup> *Id.*

Area D starts at the common boundary with Haines borough, then continues to CBJ existing boundary at Hawk Point, then continues northwest to the point of the southern boundary of Haines Borough, then continuing north to include the Mansfield Peninsula, including the watershed of Barlow Cove and Peanut Lake and Hawk Inlet. The boundary to exclude Funter Bay was drawn from topographic peaks, to ensure the entire Funter Bay watershed was excluded.<sup>158</sup>

**VI. THE AREA PROPOSED FOR ANNEXATION IS CONTIGUOUS TO THE ANNEXING BOROUGH AND DOES NOT CREATE UNNECESSARY ENCLAVES PER 3AAC 110.190(b).**

The area proposed for annexation is contiguous with the existing CBJ borough boundaries on Admiralty Island. The proposed annexation areas have been delineated within the model CBJ borough boundary by the LBC due to the contiguous nature. The proposed annexation area A is contiguous with the southern boundary of the existing CBJ, and ensures that there is not a remnant between CBJ and Petersburg left within the unorganized borough.

The proposed annexation areas do create one enclave, which is that of Funter Bay. CBJ has decided not to seek annexation of this area due to the unique history of this location. Accordingly, a pan-handle of Lynn Canal from the opening of Funter Bay should be carved out of the proposed annexation at this time.

**VII. THE PROPOSED BOUNDARY WILL ENABLE THE FULL DEVELOPMENT OF ESSENTIAL SERVICES.**

Essential services are those “mandatory and discretionary powers and facilities that are reasonably necessary to the area and promote maximum local self-government.”<sup>159</sup> Such services can include the assessing and collecting of taxes, the provision of primary and secondary

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<sup>158</sup> *Id.*

<sup>159</sup> 3 AAC 110.970(a).



education, and planning, platting and land use regulation.<sup>160</sup> Detailed information has been provided above demonstrating that the proposed annexation area conforms to natural geography. By following the natural boundaries, the CBJ's proposal includes all land and water necessary to provide essential municipal services. The essential services to be provided upon annexation, as outlined above, include emergency medical services, emergency response, building inspection and enforcement, fire inspection services, community development and taxation. (The CBJ is poised to offer other currently-provided services, such as education, to the annexation area as needs arise.)

There are no other existing city or borough able to provide services or facilities more efficiently than the CBJ, and the CBJ is already well-experienced in providing such services to rural sections of our existing borough, as we do at Shelter Island and Greens Creek. The CBJ is presently well-suited, with its extensively developed government services, to provide essential municipal services both immediately upon and after annexation as the proposed annexation area is further developed.

**VIII. THE POST ANNEXATION BOUNDARY DOES NOT OVERLAP ANOTHER EXISTING ORGANIZED BOROUGH.**

The proposed annexation areas are all within the unorganized borough. The Post-annexation boundary of the CBJ does not overlap with another existing Borough, and annexation does not create conflicts under 3 AAC 110.190(e).

**IX. THE POST ANNEXATION BOUNDARIES DO NOT INCLUDE ONLY A PORTION OF AN EXISTING CITY**

The entire region to be annexed is virtually uninhabited, and there are no developed communities within the region. There are no cities within the proposed annexation area. The post-

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<sup>160</sup> 3 AAC 110.970(b)).

annexation boundaries will not include only portions of cities, and 3 AAC 110.190(f) has been met.

**X. THE REQUESTED ANNEXATION IS IN THE BEST INTERESTS OF THE STATE (3 AAC 110.195)**

In determining whether annexation to a borough is in the best interests of the state under AS 29.05.040(a), the commission may consider relevant factors, including whether annexation promotes the maximum self-government, promotes a minimum number of local government units, and will relieve the state of the responsibility of providing local services.<sup>161</sup> All three of those will be met by the annexation.

The annexation will incorporate areas of the unincorporated borough, residents of who have no local government, which will maximum local government and promote a minimum number of local government units; the determination under 3 AAC 110.981 and 3 AAC 110.982 have been met. The proposed annexation will relieve the state of the responsibility of providing local services to a large swath of undeveloped area with many private property owners. Given that the area is virtually uninhabited with the exception of possibly six individuals, there are currently very few services being provided in the proposed annexation area (though the CBJ believes that fact could change given the likelihood that increased commercial use will result in an increased demand for services.) The State does, however, currently provide Alaska State Trooper services when necessary, which would not change.

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<sup>161</sup> 3 AAC 110.195.

**XI. THE PROPOSED ANNEXATION MEETS AT LEAST ONE OF THE NINE REQUIREMENTS FOR LEGISLATIVE REVIEW ANNEXATION PETITIONS IN ACCORDANCE WITH 3 AAC 110.200.**

The proposed annexation meet more than one of the requirements outlined in 3 AAC 110.200 for the legislative review annexation petitions as outlined below.

**A. The property owners within the proposed annexation areas may receive or may be reasonably expected to receive directly or indirectly, the benefit of borough government without consummate tax contributions.**

The property owners within the proposed annexation areas utilize CBJ services, and rely on CBJ development to access the proposed property (for example the CBJ docks and harbors for private boat owners who travel to their cabins), as well as the tourism development paid by the CBJ. The property owners are receiving these benefits without contributing to the services through property tax, or in the case of businesses who rely on the increased tourism-based services paid by the CBJ (for example, the cruise ship docks, who bring in passengers who fly to Pack Creek for bear viewing tours), without having to contribute with sales or property tax.

**B. Annexing the area will enable the CBJ to plan and control reasonably anticipated growth or development in the area that may otherwise adversely impact the borough.**

There is at least one commercial tourism business located within the proposed annexation area—the Orca Point Lodge on Colt Island. This lodge was developed without planning by the CBJ. It is reasonably likely that future growth and tourism development may occur within the proposed annexation areas, such areas should be developed with planning and other municipal services. The CBJ is more capable than any other governmental entity in the region to provide

planning and development services for future commercial enterprises within the proposed annexation areas.<sup>162</sup>

In addition to tourism and commercial development, it is anticipated that mining is reasonably likely to occur in the near future in the proposed annexation areas. The CBJ already has a portion of Admiralty Island within its boundaries, as annexed in 1994. It is reasonably likely that the Greens Creek may expand, into proposed annexation area C, where they own a large piece of property, well as possibly other mines (there are active mining rights in Area D close to the existing Greens Creek mine, as well as other mining property in areas C and A) and annexation will enable the CBJ to plan for and control that development.

Without annexing the proposed area, there will be no planning or development for any future commercial development in the areas, which could have a detrimental effect on the private property owners in the proposed annexation areas, as well as existing property and businesses within the CBJ.

### **C. The Proposed Annexation Promotes Maximum Self-Government.**

In determining whether a proposed annexation is in the best interest of the State, the Commission may consider whether the annexation promotes maximum self-government, defined by 3 AAC 110.981. As explained above, the proposed annexation areas are all within the unorganized borough, and are not part of a local government. Maximum self-government is promoted when annexation will extend local government to areas where no local government currently exists.<sup>163</sup> Specifically to borough annexation, maximum self-government is promoted if

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<sup>162</sup> This was one of the main reasons that the 1990 annexation for part of Admiralty Island was successful: the department found that the CBJ was more capable than any other entity to provide planning and services needed for developing the mine. See Exhibit L: *Report and Recommendation to the Local Boundary Commission Concerning the: 1) Proposed Annexation of the Greens Creek Mine to the City and Borough of Juneau, 2) Ideal Boundaries of the City and Borough of Juneau*, Department of Community and Regional Affairs, June 1990, p. 18.

<sup>163</sup> 3 AAC 110.981.

“the proposal would extend local government to portions of the unorganized borough.”<sup>164</sup> Again, that is unquestionably the case here as the entirety of the proposed annexation area is currently located in the unorganized borough. Without annexation, Areas A-D will remain without a local government.

**D. The Proposed Annexation Promotes a Minimum Number of Local Governments in Accordance with Article X, Section 1 of the Alaska Constitution.**

In determining whether a borough annexation promotes a minimum number of local governments, 3 AAC 110.982 directs the Commission to consider whether

the jurisdictional boundaries of an existing borough are being enlarged rather than promoting the incorporation of a new borough and whether the proposed boundaries maximize an area and population with common interests.<sup>165</sup>

As explained above, both standards are met by the annexation proposed here by the CBJ as the proposal is for an extension of the existing CBJ to an area owned and controlled by current CBJ residents and businesses, a population made up of the same individuals, and with common interests. If the property is not annexed into the CBJ, it will become subject and open to possible annexation in another borough or local government unit, and one with less common interests.

**E. The proposed post-annexation boundaries are the optimum boundaries for the region as required by Article 3, Section 3 of the Alaska Constitution.**

As the 1991 Local Boundary Commission noted for the Legislature in its Annual Report, the reason for designating model borough boundaries was to create a “useful tool for long-term planning and for decision-making in the best interests of the state” and to provide “valuable assistance” for future annexation and incorporation decisions.<sup>166</sup> The LBC in 1991 recommended a model borough boundary for the CBJ that included the proposed annexation areas, in entirety,

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<sup>164</sup> 3 AAC 110.981(2).

<sup>165</sup> 3 AAC 110.982(2).

<sup>166</sup> See Exhibit EE, *Alaska Local Boundary Commission 1991 Annual Report to the Alaska State Legislature*, Department of Community and Regional Affairs, at p. 19.

with the exception of a slight extension in Area B and C made to encompass complete watersheds.<sup>167</sup> Annexing the small pieces of land further south in Areas B and C would ensure the natural watersheds remain undivided. For these reasons, the Commission should find the proposed post-annexation boundaries are the optimum for the region.

**XII. THE PROPOSED ANNEXATION DOES NOT DENY ANY PERSON THE ENJOYMENT OF ANY CIVIL OR POLITICAL RIGHT, INCLUDING VOTING RIGHTS, BECAUSE OF RACE, COLOR, CREED, OR NATIONAL ORIGINAL.**

The proposed annexation area does not deny any property owner or person the enjoyment of their civil or political rights. By annexing the proposed areas, any full-time residents will be able to exercise their civil voting rights, and have representation in the CBJ.

**XIII. THE PROPOSED ANNEXATION AREA WILL PROVIDE ESSENTIAL MUNICIPAL SERVICES THAT ARE REASONABLY NECESSARY TO THE AREA**

See Section VIII above. There is no other existing city or borough able to provide services or facilities more efficiently than the CBJ, and the CBJ is already well-experienced in providing such services to rural sections of our existing borough, as CBJ currently does at Shelter Island, Greens Creek, and the Taku River. The CBJ is presently well-suited, with its extensively developed government services, to provide essential municipal services both immediately upon annexation and continuing on as the proposed annexation area is further developed.

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<sup>167</sup> See Exhibit FF, *Model Borough Boundaries Review, Central Southeast Alaska*, Department of Community and Regional Affairs, August 1990, at p. 38.

**XIV. CONCLUSION**

The CBJ's proposal to annex territory south to the existing Petersburg Borough, and areas on Admiralty Island and Horse and Colt Islands satisfy the applicable constitutional, statutory, and regulatory standards the Commission must apply. It is consistent with current and historical administrative boundaries and watersheds. The proposal cements the existing and historic socio-economic ties between the proposed annexation territory and the CBJ and relieves the State from providing essential services in what is now an unorganized borough territory. It maintains the private landowners' connections that already exist between them and the CBJ (and ensures these private landowners will be afforded full and fair political representation as to their holdings in the annexation area). Lastly, the CBJ has demonstrated it can provide an experienced and financially stable and strong borough government, ready to provide essential services, to the area.

As granting the CBJ's petition is in the best interest of the State, and as allowing the CBJ to annex the proposed territory will maximize local self-government while minimizing the number of local governing units, while honoring the current and historic ties between the CBJ and the territory, the CBJ respectfully requests that its petition be approved.